

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of the Commission's Rules)	GEN Docket No. 90-314
to Establish New Personal Communications)	ET Docket No. 92-100
Services, Narrowband PCS)	
)	
Implementation of Section 309(j) of the)	PP Docket No. 93-253
Communications Act - Competitive Bidding,)	
Narrowband PCS)	

To: The Commission

REPLY COMMENTS OF WEBLINK WIRELESS, INC.

WebLink Wireless, Inc. ("WebLink"), by its attorneys, hereby submits its reply to the comments filed in response to the Second Report and Order and Second Further Notice of Proposed Rule Making, FCC 00-159, released by the Federal Communications Commission (the "Commission") in the above-captioned proceedings on May 18, 2000 (the "Report & Order" or "Further Notice," as appropriate).

I. INTRODUCTION / BACKGROUND

In response to the Further Notice, the Commission received comments from FreeSpace Communications, LLC ("FreeSpace"), Motorola, Inc. ("Motorola"), the Personal Communications Industry Association ("PCIA"), Space Data Corporation ("Space Data"), Verizon Wireless Messaging Services, LLC ("Verizon"), and WebLink.¹ Many of the comments addressed both the Narrowband

¹ See Comments of FreeSpace Communications, LLC ("FreeSpace Comments"), Comments of Motorola, Inc. ("Motorola Comments"), Comments of the Personal Communications Industry Association ("PCIA Comments"), Comments of Space Data Corporation ("Space Data Comments"), Comments of Verizon Wireless Messaging Services, LLC ("Verizon Comments"), and Comments of WebLink Wireless, Inc. ("WebLink Comments").

Personal Communications Service (“NPCS”) spectrum that already has been channelized by the Commission but not yet auctioned (the “Channelized Spectrum”), as well as the 1 MHz of reserve NPCS spectrum (the “Reserve Spectrum”).

Notably, the PCIA Comments include a band plan for the Channelized Spectrum and the Reserve Spectrum (the “PCIA band plan” or “band plan”) that provides for the creation of a total of eighteen paired and unpaired channels allocated for nationwide, regional and MTA-based licensing.² Specifically, the PCIA band plan proposes MTA-based licensing for one 12.5 kHz unpaired channel and one 50 kHz / 50 kHz paired channel, and nationwide or regional licensing for six 50 kHz unpaired channels, four 150 kHz / 50 kHz paired channels, five 100 kHz unpaired channels and one 100 kHz / 50 kHz paired channel.³

PCIA also has filed a petition for reconsideration of the Report & Order, requesting the Commission to abandon its decision to use MTA-based licensing for the Channelized Spectrum (the “PCIA Petition”).⁴ Concurrent with the filing of these reply comments, WebLink is filing an opposition urging the Commission to deny the PCIA Petition.⁵

II. DISCUSSION

WebLink and the other commenters participating in this proceeding generally agree that the Commission should license the Channelized Spectrum and the Reserve Spectrum in accordance with the PCIA band plan, insofar as it concerns the sizes of spectrum blocks and channel pairing. However,

² PCIA Comments at 12-14.

³ Id. at 4.

⁴ Petition for Reconsideration of the Personal Communications Industry Association, filed July 6, 2000.

⁵ WebLink hereby renews its objection to PCIA’s efforts to supplement the PCIA Petition using the PCIA Comments and band plan. As discussed in the WebLink Comments, any proposed changes to the Commission’s decision should be addressed only within the context of established procedures for filing and supplementing petitions for reconsideration.

for the reasons discussed below, WebLink opposes the efforts of PCIA and other commenters to persuade the Commission to use nationwide and regional licensing, rather than MTA-based licensing, for the Channelized Spectrum and the Reserve Spectrum.

A. The Commission Should License the Reserve Spectrum and the Channelized Spectrum in Accordance with the PCIA Band Plan, Insofar as it Concerns the Sizes and Pairing of Channels.

None of the commenters oppose the Commission's tentative decision to proceed with channelizing and licensing the Reserve Spectrum. The other commenters also generally agree that the Commission should re-channelize the Channelized Spectrum in accordance with the PCIA band plan.⁶ WebLink concurs that the Commission should license the Reserve Spectrum and the Channelized Spectrum in accordance with the PCIA band plan, insofar as it concerns the sizes and pairing of channels.

Consistent with the foregoing, WebLink opposes FreeSpace's proposal that the Commission license the 1 MHz of Reserve Spectrum using a single 1 MHz block, or two 500 kHz blocks.⁷ In terms of channel sizes, the PCIA band plan is far superior because it will facilitate a larger number of auction winners. By contrast, FreeSpace's proposal would place all of the Reserve Spectrum in the hands of just one or two carriers. Such a result is inconsistent with the public interest because it would undermine the ability of existing NPCS carriers to expand their systems and, in essence, would reallocate the 1 MHz of Reserve Spectrum from NPCS to broadband PCS. The Commission should therefore reject FreeSpace's proposal.

⁶ Id.

⁷ FreeSpace Comments at 6.

B. The PCIA Band Plan Does Not Reflect the Consensus of the Paging Industry with Respect to Service Areas for NPCS Licensing.

PCIA and Verizon suggest that the PCIA band plan somehow represents the “consensus” of the paging industry.⁸ On the issue of geographic licensing, this assertion simply is not true. WebLink participated in the PCIA-sponsored discussions leading to the adoption of the PCIA band plan. WebLink did not vote for the PCIA band plan because the band plan would jettison MTA-based licensing in favor of nationwide and regional licensing. Consequently, the band plan does not represent the consensus of those paging carriers that participated in the PCIA discussions leading to its adoption. Nor does the band plan represent the consensus of the hundreds of mid-sized and smaller paging carriers that have relied on the expected availability of NPCS licenses based on small geographic areas, and that would therefore be greatly harmed by full implementation of the PCIA band plan.

Rather, the plan represents the views of the large paging companies and conglomerates that voted for it, and that can easily afford to purchase nationwide or regional licenses. However, the Commission’s mandate to protect the public interest extends to a much larger group, including those smaller companies that cannot afford nationwide and regional licenses, carriers desiring to augment their networks or expand their coverage areas in order to provide improved services to their customers, and even the customers of such carriers, who stand to receive continued, improved services from the service providers on which they have come to rely. As recognized by the Commission and discussed in the WebLink Comments, only MTA-based licensing serves equally the interests of small companies, those

⁸ PCIA Comments at 2; Verizon Comments at 12-13.

larger carriers that voted for the PCIA band plan, and those carriers desiring to fill in coverage gaps.

C. The PCIA Band Plan Does Not, As PCIA Claims, Provide Flexibility and Benefits for Large and Small Carriers.

PCIA suggests that the PCIA band plan provides “maximum flexibility” for large and small carriers to construct licensing areas that suit their particular needs.⁹ Paying lip service to the importance of the Commission’s protection of the interests of small businesses, PCIA asserts that 50 kHz blocks are small enough to encourage competition in the paging industry by small businesses, and sufficiently large for companies to offer viable competitive services.¹⁰ According to PCIA, “small businesses should be able to acquire licenses at auction,” but the elimination of 50 kHz licensing “would inhibit participation by all but the very largest of companies without regards for the need for competitive, smaller players within the market.”¹¹

While PCIA touts the benefits and flexibility for small and large companies of small spectrum blocks, it completely ignores the fact that those benefits can only be achieved by allocating such blocks in manageable service areas. Indeed, the problems that PCIA seeks to avoid through the preservation of 50 kHz spectrum blocks (the exclusion of smaller players), are recreated (and possibly with greater force) by the replacement of MTA-based licensing with nationwide and regional service areas. Instead of creating flexibility and opening the NPCS auction to small businesses, allocating small spectrum blocks in regional and nationwide service areas would effectively close the auction to smaller carriers that cannot afford licenses based on such large areas, and carriers that need spectrum only in certain markets.

⁹ PCIA Comments at 5.

¹⁰ *Id.*

¹¹ *Id.* at 5-6.

The PCIA band plan would allocate the overwhelming majority of the available NPCCS spectrum for nationwide and regional licensing.¹² Specifically, the PCIA band plan proposes MTA-based licensing for just one 12.5 kHz unpaired channel and one 50 kHz / 50 kHz paired channel. All of the remaining paired and unpaired channels -- sixteen in total -- would be allocated for nationwide and regional licensing.¹³ Viewed on the basis of these statistics alone, the PCIA band plan provides only minimal opportunities for carriers to obtain MTA-based licenses.

Furthermore, viewed from a practical business perspective, the PCIA band plan is the functional equivalent of allocating no spectrum for smaller carriers. Such carriers cannot realistically execute their business plans, which were premised on the expectation that they would be able to augment their systems or expand into selected areas, if only a very small number of channels are allocated for smaller-area licensing. Additionally, as PCIA admits, carriers “cannot count on large spectrum holders to disaggregate or partition their licenses on a broad scale.”¹⁴ As discussed in the WebLink Comments, however, by using MTA-based licensing for the Channelized Spectrum and most of the Reserve Spectrum, the Commission will provide maximum flexibility, thereby serving the needs of large, mid-sized and smaller businesses.

D. MTA-Based Licensing Will Not Undermine Auction Efficiency.

PCIA suggests that adoption of the PCIA band plan somehow will promote “auction efficiency.”¹⁵ WebLink is not aware of any statutory command requiring the Commission to promote “auction efficiency.” Rather, the Commission’s most fundamental objective is to promote the public

¹² Id. at 4.

¹³ Id.

¹⁴ Id. at 6.

¹⁵ PCIA Comments at 6-7.

interest. Additionally, Section 309(j) of the Communications Act (“Section 309(j)”) specifically requires the Commission to create meaningful economic opportunities for smaller businesses. As mentioned above, MTA-based licensing will promote both of these fundamental and interrelated objectives because it serves the needs of a wide range of businesses, including large, mid-sized and smaller businesses.

Furthermore, PCIA’s assertion that nationwide and regional licensing will promote “auction efficiency” is unsupported. Although auctions for nationwide and regional licenses inherently involve fewer licenses, that does not mean that an auction for MTA-based licenses somehow would be “inefficient” in terms of the auction process itself or its results. The Commission has conducted successfully auctions involving even smaller licensing areas, and has recognized that MTA-based licensing affords ample opportunities for aggregating licenses to form large, contiguous service areas.¹⁶

E. MTA-Based Licensing Will Not Impede the Ability of NPCS Licensees to Compete with Other CMRS Providers.

PCIA suggests that licensing the Channelized Spectrum and the Reserve Spectrum using MTAs will impede the ability of NPCS licensees to compete with other Commercial Mobile Radio Service (“CMRS”) providers.¹⁷ Similarly, Verizon suggests that trends in the marketplace require geographic licensing areas to be larger than MTAs.¹⁸ These assertions ignore the needs of nationwide carriers such as WebLink that are competing successfully with other CMRS providers. WebLink and other similarly situated carriers need spectrum in specific MTAs to implement their business plans.¹⁹ By providing ample opportunities for such carriers to obtain MTA-based licenses, the Commission will

¹⁶ See Report & Order at ¶ 10.

¹⁷ PCIA Comments at 7.

¹⁸ Verizon Comments at 6-8.

ensure that such carriers are able to continue competing with other CMRS providers.

Additionally, PCIA and Verizon both ignore the fact that -- from a technical perspective -- large, contiguous service areas formed by aggregating MTA-based licenses, or by establishing roaming agreements with other carriers, are functionally equivalent to the types of service areas authorized by nationwide and regional licenses. If carriers truly require nationwide and regional service areas to compete with other CMRS providers, they will aggregate MTA-based licenses accordingly.

F. MTA-Based Licensing Will Not Cause Spectrum Coordination Problems or Undermine Spectrum Efficiency.

PCIA and Verizon assert that MTA-based licensing raises interference coordination problems which would impose transaction costs on carriers attempting to establish spectrum coordination agreements with carriers in neighboring MTAs or, worse yet, necessitate the use of guard bands in a manner that would result in an inefficient use of spectrum.²⁰ PCIA's concerns are exaggerated.

The coordination issues raised by PCIA and Verizon are no worse for MTA-based licensing than they are for licensing based on larger areas. Both MTA and regional licensees have for many years been required to coordinate with licensees in adjacent areas, and there is no significant difference in the time and effort required to do so between regional and MTA service areas. Moreover, such coordination has not historically proven to be a problem, as the paging industry possesses the technical expertise and experience to ensure successful coordination of hundreds of carriers. Thus, although numerous large and small paging carriers now own paging licenses based on MTAs or smaller areas, no wide spread interference problems have ever been reported within the paging industry.

¹⁹ See WebLink Comments at 7-8.

²⁰ PCIA Comments at 8-9; Verizon Comments at 7.

Neither PCIA nor Verizon explains why the industry would be unable to continue that trend in the face of continued MTA-based licensing.

Similarly, the suggestion that, if the Commission maintains MTA-based licensing, more guard band spectrum would be needed, is also misplaced. Guard bands are not used to prevent interference between geographic areas, but rather to avoid interference between different channels in the same area. Consequently, the guard band issues are essentially the same for BTA, MTA, regional and nationwide channels. The question of the allocation of guard bands is therefore largely irrelevant to the consideration of service areas.

Additionally, as the Commission recognized in the Report & Order, many carriers will choose to aggregate MTAs to form large, contiguous service areas. Consequently, the overall amount of coordination that will be required is much less than PCIA suggests. Indeed, assuming for the sake of argument that PCIA is correct that carriers generally demand nationwide and regional service areas, the extent of license aggregation would be rather significant, and thus the overall amount of coordination required would be minimized.

Contrary to PCIA's assertions, MTA-based licensing will promote spectrum efficiency by allowing carriers to obtain spectrum in markets where spectrum is needed most. Nationwide licensing, on the other hand, is a one-size-fits-all approach that would encourage carriers to use spectrum inefficiently, and, perhaps, engage in spectrum warehousing.

G. If the Commission Creates Additional Regional and Nationwide Licenses, it Should Do So in a Small Portion of the Reserve Spectrum.

In the WebLink Comments, WebLink requested that the Commission apply MTA-based licensing to both the Channelized and Reserve Spectrum. WebLink hereby renews that request. In the event, however, that the Commission decides to create additional regional and/or nationwide

NPCS channels, it should do so without revisiting its well-reasoned decision in the Report & Order to use MTAs for the Channelized Spectrum. The Commission can allocate a small portion of the Reserve Spectrum for nationwide and/or regional licensing, and thereby serve the interests of those large carriers desiring only to purchase licenses based on large geographic areas, without disturbing the MTA licensing decision in the Report & Order.

III. CONCLUSION

Consistent with the foregoing discussion, WebLink urges the Commission to use MTA-based licensing for both the Channelized Spectrum and the Reserve Spectrum. The commenters have failed to present any compelling reason why the Commission should use nationwide or regional licensing for the Channelized Spectrum or the Reserve Spectrum. The Commission can reasonably accommodate the needs of large, mid-sized and smaller businesses by adhering to its well-reasoned decision to use MTA-based licensing for the Channelized Spectrum and by primarily using MTA-based licensing for the Reserve Spectrum.

Respectfully submitted,

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